



October 19, 2016

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Re: WC Docket No. 16-106**

Dear Ms. Dortch:

As the Commission prepares to vote on new broadband privacy rules, we write on behalf of the startup community and users who value the innovations we create to emphasize one central point: the fundamental importance of technological neutrality in any regulation of the internet.

The internet is a single ecosystem, a “network of networks” that weaves together a vast and seamless web of applications, services, products, and experiences. For privacy rules – or any other regulations – to be effective they must apply in an evenhanded way across the entire ecosystem. That core principle of “tech neutrality” has been at the heart of internet regulation for decades, and has been specifically recognized as vital for privacy protection by the Federal Trade Commission (FTC) and the Obama Administration multiple times, as the record in this proceeding reflects.

Failing to create genuinely tech neutral rules will introduce needless and costly drag into the system by requiring innovators to design and build to inconsistent standards and disrupting the user experience to no good end. And it will distort markets online by creating different rules and obligations for similarly situated competitors using the same data for the same purposes. The end result – less innovation and higher prices online.

Failure to implement tech neutrality into regulations inevitably leads to the obviation of or circumvention of intended privacy protections. The FCC should avoid either outcome from the outset. The FCC has the opportunity to determine that it will protect consumer privacy no matter how broadband technologies evolve or the marketplace of broadband providers morphs.

Unfortunately, while the Commission’s revised proposal as described in the Chairman’s recent Fact Sheet moves towards the goal of tech neutrality, it stops short of bringing us all the way there.

Most importantly, the proposal described in the fact sheet would create overbroad and conflicting standards for the privacy regulations applying to data collected through web browsing and app usage information, among the largest and most significant categories of data that exist online. That is a dangerous and costly error that will leave consumers holding the bag – forcing them to adjust to conflicting privacy regimes and creating a serious risk that consumers mistakenly believe that actions taken to protect their privacy in one internet context will be effective in others.

Consumers expect their most sensitive data to receive the most protection, and the fact is, most consumers do not believe that surfing for movie times or looking up baseball scores is as sensitive as inquiries to a web based loan service or their social security number. Yet the proposed rule would treat all ISP web and app information as inherently sensitive and unusable barring cumbersome opt-in consent regardless of the context or subject. The same rule would not apply to other online companies that use the same web browsing and app information. Even Google has widely criticized this illogical and inconsistent approach – even though they are not technically “covered” by it – because it runs so fundamentally counter to how we have always protected privacy on the web.

In other areas, the Commission also appears to have stopped short of genuinely harmonized, consistent, tech neutral standard – by erecting questionable obstacles in the way of broadband providers who wish to offer discounts or new products and services to their own customers that do not apply to other internet companies. And there appears to be other areas where the Fact Sheet proposal would not allow common and ordinary uses of data based on “inferred consent” that are routinely permitted elsewhere on the web.

In all these cases, there is an easy, pro-innovation, pro-consumer solution at hand – completely harmonize the Commission’s rules with the successful and effective approach already in place for much of the internet under the framework created and enforced by the FTC. There is simply no justification for reinventing the wheel or introducing requirements that conflict with those already working well and under which the internet has thrived. Doing so does nothing to protect consumers.

We urge the FCC to follow the principle of tech neutrality to its logical and pro-consumer conclusion – and fully harmonize its approach to privacy with that of the FTC.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large loop and a trailing line.

Mike Montgomery  
Executive Director